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10/789,078

02/27/2004

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EXAMINER

CHAMBERS, TROY

ART UNIT

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PAPER

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**GROUP 3600**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/789,078  
Filing Date: February 27, 2004  
Appellant(s): WYGANT, STEVEN J.

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Max Garwood  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 22 September 2006 appealing from the  
Office action mailed 15 March 2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

US	5,769,066	6-1980
US	2004/0200406	10-2004

### (9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

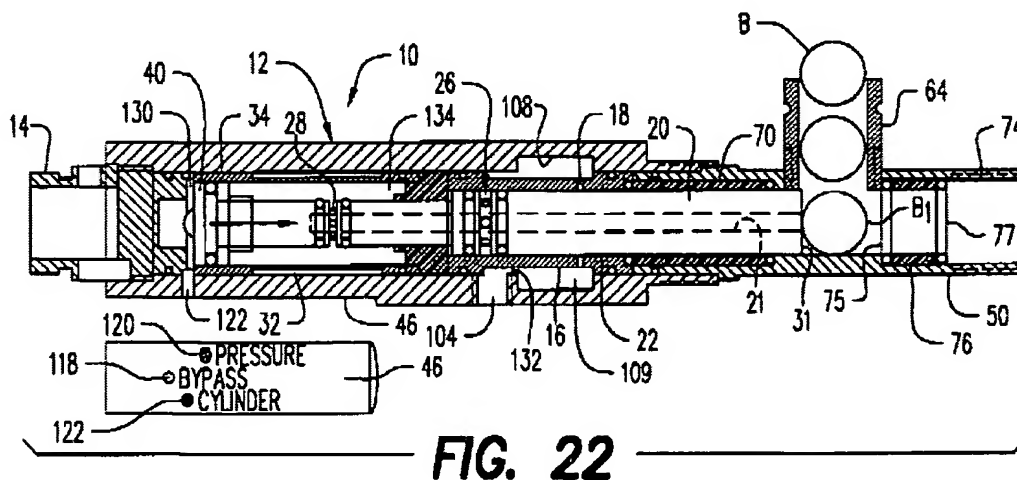
#### ***Claim Rejections - 35 USC § 102***

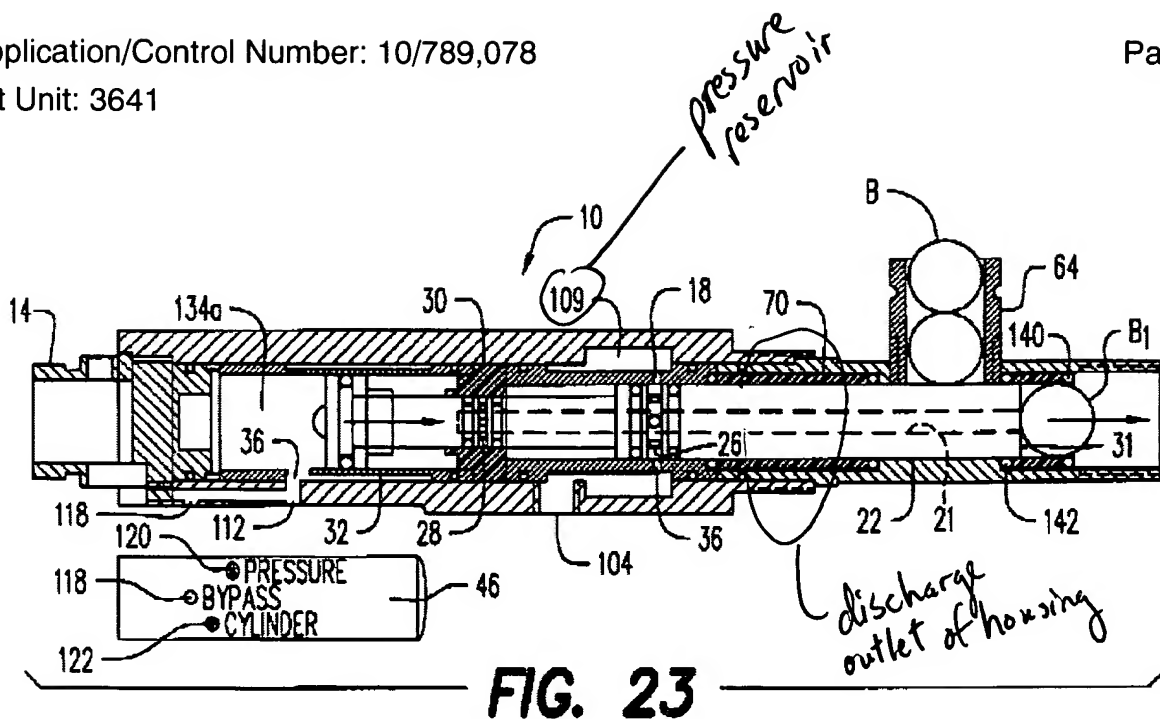
1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 7-9 and 12-14, 17, 18 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 5769066 issued to Schneider. Schneider discloses a pneumatic shooting device 10.





3. With respect to claim 1, Schneider discloses a pneumatic shooting device comprising:

- a. a barrel 72;
- b. an action including:
  - i. a housing 12,
  - ii. a pressure reservoir 109,
  - iii. a discharge outlet see Fig. above
  - iv. a linear body 32,
  - v. a piston 40.

Upon return of the piston to the retracted position, the discharge outlet is closed to a source of pressurized gas (col. 5, ll. 66 to col. 6, ll. 6).

4. With respect to claim 2, Schneider discloses a piston 40 having an actuating end (left end), and an actuating reservoir 134a.

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5. With respect to claim 3, Schneider discloses a source of pressurized gas (col. 3, ll. 38-41).
6. With respect to claim 4, Schneider discloses:
  - c. a supply fitting 26,
  - d. an actuator fitting 28,
  - e. a slip ring 30.
7. With respect to claim 5, Schneider discloses an exhaust vent 118.
8. With respect to claim 7, Schneider discloses piston 40 have a radial seal provided by element 70 (Fig. 22) and element 77 (Fig. 23).
9. With respect to claim 8, Schneider discloses a barrel interface 22 and a face seal (see Fig. 22).
10. With respect to claim 9, Schneider discloses a regulator 44 and tubing (Figs. 7-10).
11. With respect to claim 12, Schneider discloses a pressure relief valve 46.
12. With respect to claim 13, refer to any one of Figs. 22-24 which discloses a breech at the end of barrel 74, the balls B being loaded at said breech.
13. With respect to claim 14, refer to col. 2, ll. 29-32.
14. With respect to claim 17, refer to any one of Figs. 22-24.
15. With respect to claim 18, the piston 40 operates in response to gas pressure.
16. With respect to claim 20, refer to any one of Figs. 22-24 which shows linear body 32 attached to pressure reservoir 109.
17. With respect to claim 21, refer to the rejection of claim 1.

18. With respect to claim 22, refer to the rejection of claim 2.

***Claim Rejections - 35 USC § 103***

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider in view of US 2004/0200466 issued to Salva. Schneider discloses a pneumatic shooting device as discussed above including a trigger 80. However, Schneider does not disclose a trigger safety. Salva discloses such a trigger safety comprising a safety catch [0026]. At the time of the invention, one having ordinary skill in the art would have found it obvious to provide the shooting device of Schneider with the safety catch of Salva. The suggestion/motivation for doing so would have been to prevent the unintended firing of the gun. Moreover, the Examiner takes Official Notice that trigger safeties are well known in the art.

Claims 10, 11, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider. Schneider discloses a pneumatic launching device as discussed above. However, Schneider does not disclose the burst ratios and diameter ratios claimed by the applicant. The Examiner notes that the specification contains no disclosure of either the critical nature of the claimed dimensions or any unexpected results arising therefrom, and as such, the ratios are arbitrary and obvious. At the time of the

invention, one having ordinary skill in the art would have found it obvious to provide the launcher of Schneider with the claimed ratios since it has been held that where patentability is said to be based upon particular chosen dimensions or upon another variable recited in a claim, the applicant must show that the chosen dimensions are critical. In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990).

#### **(10) Response to Argument**

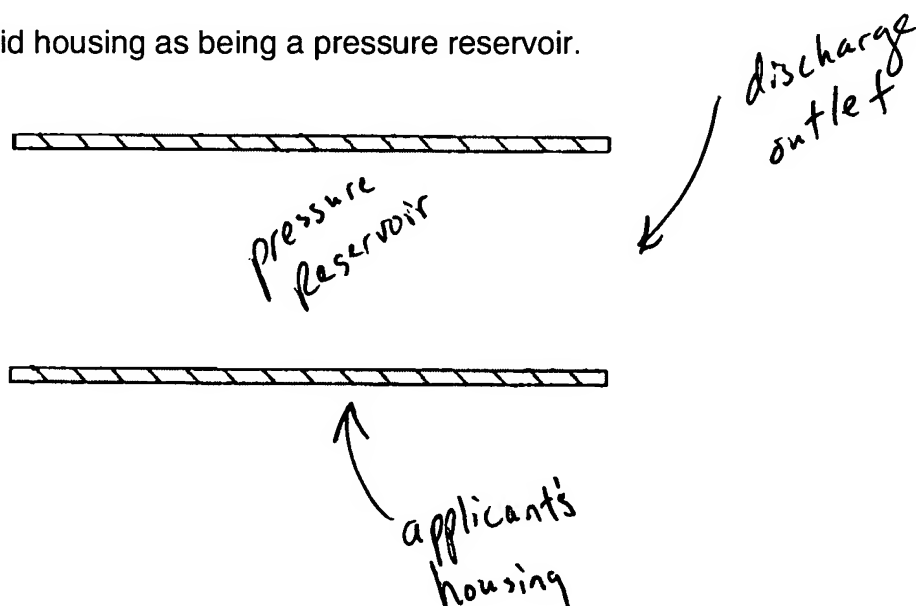
Applicant's arguments have been fully considered but they are not persuasive. For reasons unknown to the examiner, the applicant maintains the position that Schneider fails to anticipate independent claims 1 and 21. According to the applicant, the housing included with the action does not define a pressure reservoir with a discharge outlet connected to and approximately collinear with said barrel. While the applicant makes reference to the circuitous route the gas takes in the Schneider reference, this has little, if anything, to do with the requirements of applicant's claim language.

Contrary to applicant's arguments, Schneider clearly anticipates independent claims 1 and 21. A review of the applicant's drawings and that of the prior art will be helpful. According to the applicant, the housing of Schneider does not define: 1) a pressure reservoir and 2) a discharge outlet connected to and approximately collinear with said barrel. To illustrate the examiner's position, the applicant's housing 16 as shown in Fig. 2 has been recreated minus the other elements such as the barrel 12, bearing body 22 and piston 24. As shown below, applicant's housing consists of a tubular structure with an open first end (left end) and an open second end (right end)



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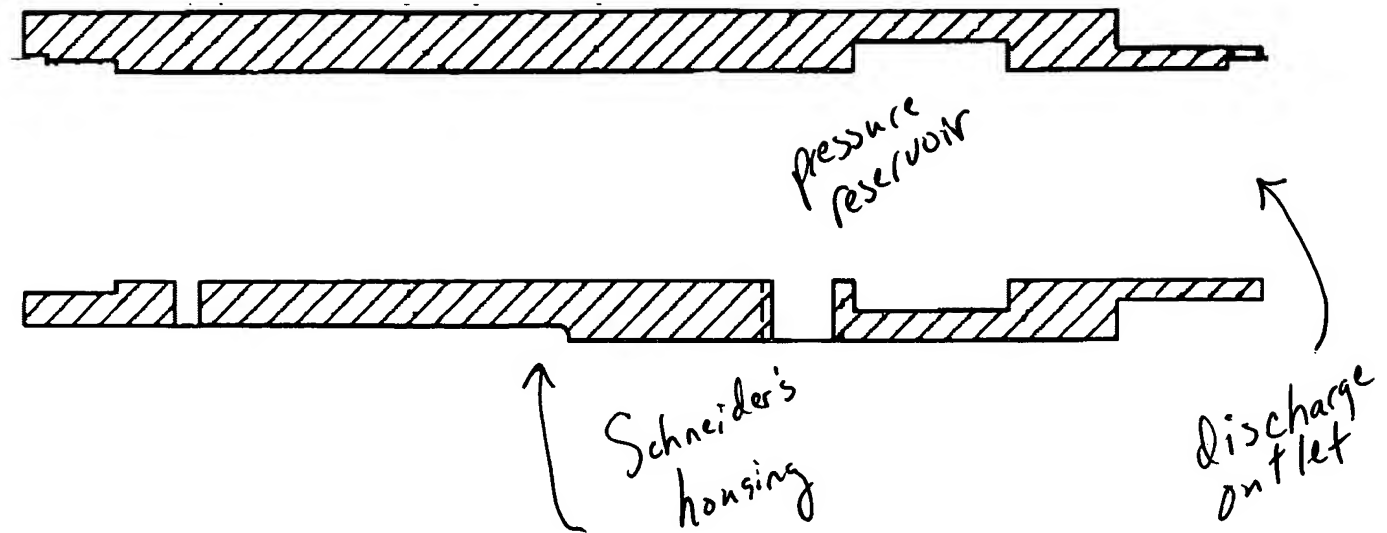
that opens into a barrel (currently not shown). Applicant describes the interior space surrounded by said housing as being a pressure reservoir.



Recreated below is the housing 12 disclosed by Schneider minus the other elements.

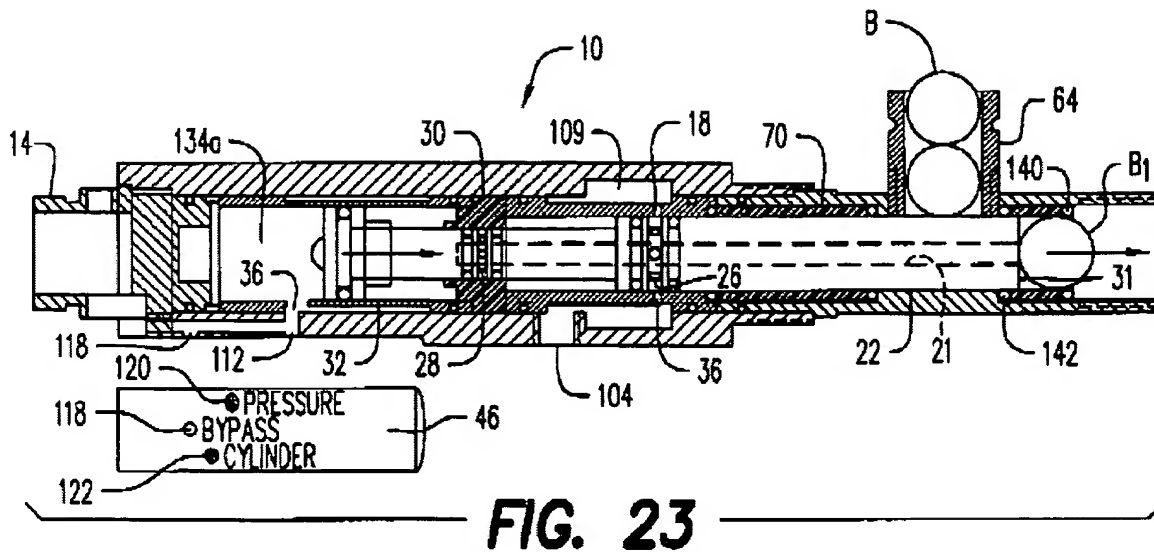
Similar to applicant's housing 16, the Schneider housing 12 discloses a tubular structure with an open first end (left end) and an open second end (right end) that opens into a barrel. The space defined by the tubular housing necessarily creates a pressure reservoir.

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As shown above, both housing are structurally similar. If both the housing disclosed and claimed by the applicant and the housing disclosed by Schneider are structurally the same, how can the applicant argue that they are different?

The applicant's position that Schneider does not anticipate the claims at issue may be due to a misunderstanding of what Schneider discloses or how the examiner is interpreting the reference. For example, at the top of pg. 14 of applicant's brief it is said, "The barrel of Schneider never stores a fluid, and therefore, is never a reservoir." However, at no point does the examiner indicate that the barrel serves as a pressure reservoir. As shown below, the paintball gun of Schneider includes a ball chamber 50. The discharge outlet of the housing 12 is connected to ball chamber 50 at a rear end and a barrel 72 is connected to ball chamber 50 at a front end.



When the piston 40 is in the forward position, gas stored in the pressure reservoir 109 enters passages 18 and 26 and leaves the housing through its discharge outlet (right end of housing 12). The fact that the air takes a circuitous route before leaving the chamber 12 through its discharge end is of no consequence since applicant's use of the transitional *comprising* does not operate to exclude other elements.

Applicant further argues that the barrel opening of Schneider is not selectively closed by said piston because the "barrel opening of Schneider constantly remains open". However, as discussed above, the barrel opening of the Schneider barrel is not the discharge outlet. The discharge outlet is located at the far right terminating end of the housing 12. When the piston 40 of Schneider is in the rearward position, gas stored in the pressure reservoir 109 is denied an exit through port holes 18 because port holes 18 are not in alignment with radial ports 26.

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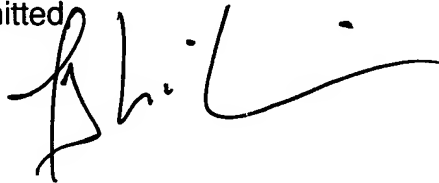
**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Troy Chambers  
Primary Examiner  
AU 3641

A handwritten signature in black ink, appearing to read 'T. Chambers', written over the printed name.

Conferees:

M. Garone 

A. Felton 